

DOCKET NO.: ZMOG-0099 (98-54C3)
Application No.: 11/557,689
Office Action Dated: May 28, 2009

PATENT

REMARKS

Claims 1-4 are pending. Claims 5-12 have been withdrawn pursuant to a restriction requirement. Claims 1-3 have been amended. Claims 1-3 have been amended to pursue certain embodiments and Applicants expressly reserve the right to prosecute the canceled subject matter in other related applications. Support for the amendments can be found throughout the specification, and the amendments present no new matter.

The priority claim under 35 USC § 119(e), 120, 121, or 365(c) has been denied. The denial is based on the Office's record which does not show co-pendency between the instant application and the prior application from which it claims priority.

Applicants traverse the rejection of priority. The instant application is a CIP of U.S. Application No. 10/738,929, filed December 16, 2003. The '929 application claims priority as a continuation from the 09/397,846 application. The Examiner alleges that the '846 application went abandoned on September 17, 2003, and therefore, was not co-pending with the '929 application as required by statute. Applicants are enclosing and submit as evidence, the Petition and Fee for Extension of Time Under 37 CFR 1.136(a) filed for U.S. Application No. 09/397,846 on December 16, 2003. Based on this evidence, U.S. Application No. 09/397,847 was still pending when U.S. Application No. 10/738,929 was filed on December 16, 2003. Applicants respectfully request that Examiner grant the priority of all the applications in the chain of priority to each of the pending claims.

Claim 4 has been rejected under 35 USC § 102 (a or e) as being anticipated by US Application 2003/0003545.

Applicants traverse the rejection and for the reasons stated above submit the rejection has been obviated by the evidence verifying the co-pendency of US Patent Application No. 09/397,846. Applicants respectfully request the rejection be withdrawn and the claim allowed.

Claims 1-4 have been rejected under 35 USC § (b) as being anticipated by Starnes, J. Immunol. 169(2):642-6, 2002.